



# Module 2, Lesson 1

## LEGAL FRAMEWORK

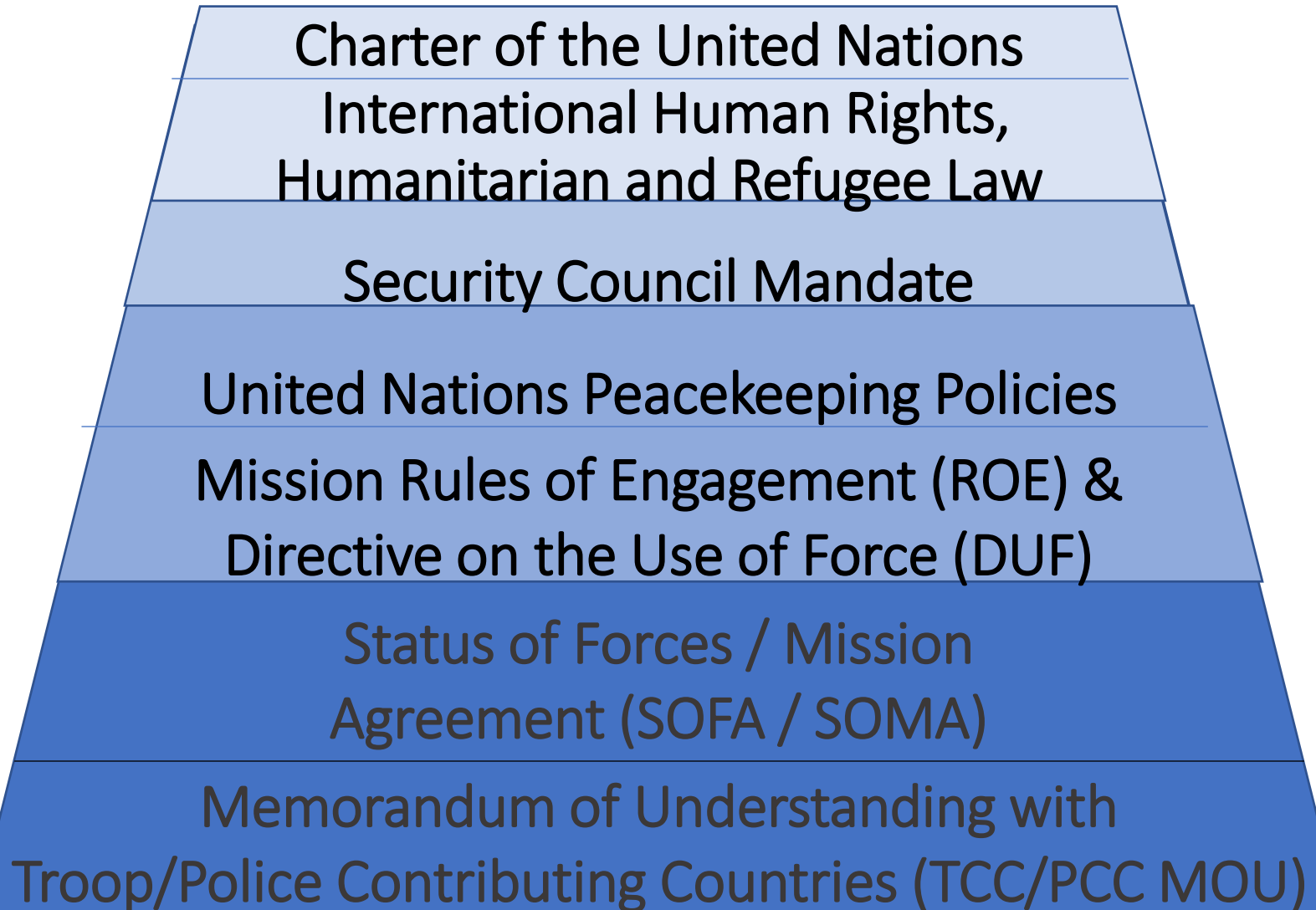


# Learning Objectives

- **Identify** the key components of international law governing mandated tasks in United Nations peace operations
- **Understand** core legal concepts and norms
- **Clarify** what the legal framework enables/obliges peacekeeping personnel to do, and what it prevents peacekeeping personnel from doing



# Lesson Overview



# International Law



# International Law

- International Human Rights Law
- International Humanitarian Law (IHL)
- International Criminal Law
- International Refugee Law



# International Human Rights Law (IHRL)

- Protect inherent rights of all human beings
- Obligations mainly for States
- Universal and cannot be taken away
- Civil, political, economic, social & cultural rights
- IHRL applies
  - in times of peace and war
  - primarily to Governments



**Peacekeeping personnel must respect, protect and promote human rights.**



# Case 1: Help wanted

A political opposition party calls on entire families to attend peaceful protests. The Government prohibits the protests and sends in its army to disperse the demonstrators.

A local army commander asks UN Forces to provide additional troops to help disperse the demonstrations and “restore law and order”.

**Is the United Nations allowed to provide such help?**



# Human Rights Due Diligence Policy on UN Support to non-UN Security Forces

- The UN cannot provide support to non-UN security forces:
  - If there is a real risk of the receiving entities committing **grave violations** of international humanitarian, human rights, or refugee law, and
  - The relevant authorities fail to take the necessary **corrective or mitigating measures**

**Protects and promote credibility,  
impartiality and the legal interests of the  
mission.**





# Application of the HRDDP

- Risk mitigation & engagement, not blunt conditionality
- Suspension or withdrawal of support: measure of last resort
- Applies to all types of support
- Includes support to States and regional organizations
- HRDDP senior-level task forces and standard operating procedures



# International Humanitarian Law (IHL)

- Regulates the conduct of hostilities, and protects those not engaged in conflict
- Applies to international and non-international armed conflict
- Geneva Conventions and Additional Protocols
- IHL applies:
  - to armed conflict only
  - to all parties in a conflict
  - to UN military personnel for the duration of hostilities



# Protected Persons under IHL



- Civilians not directly participating in hostilities
- Medical and religious personnel of armed forces
- Wounded, sick and others hors combat
- Prisoners of war & interned armed group fighters
- Peacekeeping personnel (unless engaged in hostilities)



# Conduct of Hostilities: Basic Principles

- **Distinction** between civilians and military targets
- **Precaution** to avoid civilian losses
- **Proportionality** between military advantage & civilian loss



# Case 2: Plan of attack

- An armed group regularly attacks local civilians. The fighters of the group live in a village among civilians, including children, of the same ethnicity. The fighters do not always wear uniforms or carry weapons openly. The village has a hospital where many wounded fighters are treated.
- The host State's army is planning to launch armed operations against the group in the village.

**The army asks the UN Mission for advice on how to conduct its operation in line with IHL**



# Protection of Women

## IHRL and IHL

- Special protection against sexual violence, including rape and enforced prostitution
- Special protection while detained



# International Refugee Law

- Refugees usually need special protection. Missions may have a mandate to assist with their return
- 1951 Refugee Convention:
  - Definition: Fear of **persecution** owing to race, religion, other
  - International protected status / under UNHCR mandate
  - Refugee rights
- 1969 African Refugee Convention
  - Refugee status also to those fleeing **armed conflict** and other major violence



# Case 3: Go back home

The host State's army is forcing refugees to go back to their home countries.

The refugees will be imprisoned in their home countries for "having left the country illegally". In the prisons, woman and girls are often raped by the guards.



**What legal concerns should the UN raise with the army?**





# Rights of Refugees

- Prohibition of expulsion or return (“*refoulement*”)
- Prohibition of discrimination on grounds of race, religion or country of origin
- Freedom to practice religion
- Right to acquire property
- Access to courts
- Public education
- Assistance
- Freedom of movement



# Internally Displaced Persons (IDPs)

- **Forced** to flee their homes (e.g. owing to war or natural disaster), but **have not crossed an international border.**
- **Maintain** human rights and citizens' rights
- **Must be protected** by their home State
- Protected under:
  - UN Guiding Principles on Internal Displacement
  - AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa



# International Criminal Law

- **War crimes:**
  - Grave breaches of Geneva Conventions and other serious violations of IHL
- **Crimes against humanity:**
  - Systematic or widespread inhumane acts
- **Genocide:**
  - Intent to destroy ethnic or religious group
- **State duty to prosecute** perpetrators of war crimes, crimes against humanity and genocide
- **International tribunals & courts** can prosecute (e.g. International Criminal Court)



# Case 4: Irresponsible command

- The military systematically looted a city, and soldiers raped hundreds of women and girls
- The military commander troops never ordered her troops to commit such atrocities. However, she knew about them and did nothing to stop the troops under her command

Has she committed an international crime?



# Command responsibility

Commanders are responsible for war crimes and crimes against humanity committed under their command if:

- They **knew or should have known** about the commission of the crimes

AND

- failed to take all necessary and reasonable measures to **prevent or repress** the crimes, including by investigating and prosecuting the perpetrators

**Criminal responsibility without  
direct participation in the crime**



# Peacekeeping - Specific Law



# Security Council Mandate

- A Security Council resolution is the highest legal basis for the deployment of a mission
- It outlines the tasks and responsibilities that the mission is expected to accomplish



# Mutually Reinforcing Protection Mandates

## Human Rights

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- Addresses everyone and all human rights, not only physical integrity

## Protection of Civilians

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- Protects against physical violence
- Includes physical protection and prevention, including use of force

## Child Protection

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- Built around six grave violations against children in times of conflict

## Conflict-related Sexual Violence

- Requires a conflict nexus
- Concerns girls, women, boys and men



**Whole-of-mission responsibilities**





# Case 5: Mandate interpretation

The Mission's mandate authorizes it to take **“all necessary measures to protect civilians”**

- Local villagers captured three 16-year olds who they accuse of being fighters of an armed group involved in crimes against humanity
- The Mayor of the town wants the United Nations Mission to send Blue Helmet peacekeepers to detain the three youths and put them on trial. The Mayor fears that riots may break out or the three may be lynched if not detained and tried

**What is the mission legally allowed to do?**

**What is it not allowed to do?**



# Protection of Civilians Mandate: “Take all necessary action”

- Includes military, civilian and police action
- Does not replace the sovereign responsibilities of the host State
- Authority to use deadly force (as a last resort) to protect civilians under threat
- Must comply with IHRL and IHL as spelled out in the rules of engagement



# United Nations Policies and Guidance

- The Secretary-General's policies apply to all United Nations work
- The Department of Peace Operations' policies apply specifically to peace operations
- Details of the policies are transmitted through guidelines, standard operating procedures and standing orders
- Guidance issued by the Secretary-General or by the Department of Peace Operations is legally binding



# DPO Policy on Peacekeeping- Intelligence

## Limits on UN Intelligence Activities

- Full respect for human rights and international law
- No clandestine activities
- No exposure of sources to harm
- Independence of UN Peacekeeping-Intelligence
- Cooperation with States subject to conditions



# Case 6: A new armed group

To obtain information about a new armed group, United Nations military observers are considering approaching children who work for the group as porters and cooks. They do not intend to pay the children for any information provided.

Is this course of action allowed?



# Policy on Human Rights in Peace Operations

## Responsibilities of UN troops

- Identify
- Record
- Report
- Confidentiality
- Refer victims (support)
- Protect
- Follow up situation



# Takeaways

- All mission work must respect and promote international human rights, humanitarian and refugee law
- The Security Council has issued several mutually reinforcing mandates that protect children and establish priorities for missions
- DPO and other UN policies establish binding rules by which all staff must abide, including rules to protect children



# References

- United Nations, DPKO-ITS, Core Pre-deployment Training Materials 2017
- United Nations, DPKO-ITS, Comprehensive Protection of Civilians Training Materials for United Nations Military, 2017
- United Nations, DPKO/DFS, United Nations Peacekeeping Operations Principles and Guidelines, 2008





# Questions

